

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:20-CV-00049-KDB-DCK**

ANTHONY J. RANKINE,

Plaintiffs,

v.

**JAMES MICHAEL PAGE, ET
AL.,**

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Default Judgment, (Doc. No. 6), and the Court's *sua sponte* consideration of dismissal of this action for failure to properly effectuate service. Without proper service, this Court lacks personal jurisdiction over the defendants. *See Koehler v. Dodwell*, 152 F.3d 304, 306 (4th Cir. 1998) ("Absent waiver or consent, a failure to obtain proper service on the defendant deprives the court of personal jurisdiction over the defendant."). When a civil action is commenced by the filing of a complaint, "[a] summons must be served with a copy of the complaint." Fed. R. Civ. P. 3, 4(c). Unless a plaintiff notifies the defendant of the action and requests that defendant waive service, plaintiff must serve the summons and complaint within the time allowed by Rule 4(m). *See Hill v. McCrory*, No. 116CV00259MOCDLH, 2016 WL 4520902, at *3 (W.D.N.C. Aug. 29, 2016).

This action was filed on April 21, 2020. A notice of lack of prosecution for failure to effect service was sent to Plaintiff on July 29, 2020. Having received no return of service, the Court, on December 14, 2020, entered an Order to Show Cause requiring Plaintiff to file a "Status Report" with the Court within 30 days "as to why this case should not be dismissed for lack of return of

service.” In response to this Order, Plaintiff filed a Motion for Default Judgment reiterating his claims against Defendants but still failing to demonstrate service.¹ Accordingly, the Court lacks jurisdiction over the Defendants and will dismiss this action without prejudice. The Court cannot and does not reach the merits of Plaintiff’s Motion for Default Judgment.

ORDER

NOW THEREFORE IT IS ORDERED THAT:

1. Plaintiff’s Motion for Default Judgment (Doc. No. 6) is **DENIED**;
2. This action is dismissed based on Plaintiff’s failure to effect timely service; and
3. The Clerk is directed to close this matter in accordance with this Order;

SO ORDERED ADJUDGED AND DECREED.

Signed: March 3, 2021


Kenneth D. Bell
United States District Judge

¹ Plaintiff asserts that some of the Defendants have notice of his claims based on an earlier action in Australia, but service of papers related to that case does not constitute proper service of the Complaint in this action.